Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 87-686

IN THE SUPREME COURT OF
THE UNITED STATES
OCTOBER TERM, 1987

HAROLD B. SCHLENGER, PETITIONER

v.

MONICA P. SCHLENGER, A/K/A MONICA PETRICEK, INDIVIDUALLY AND AS TRUSTEE OF THE UNITED WOOL PIECE DYEING AND FINISHING COMPANY PENSION TRUST, UNITED WOOL PIECE DYEING AND FINISHING COMPANY PENSION TRUST, UNITED WOOL PIECE DYEING AND FINISHING COMPANY, CAMPBELL INVESTMENT COMPANY, AND HARMONIQUE FARMS CORPORATION,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
AND REQUEST FOR SUMMARY REVERSAL

# PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS


| | Page |
|---|---|
| Response to arguments I & II raised in respondents brief in opposition..... | 1 |
| Points seriously erroneous in repondents brief in opposition..... | 3 |
| New developments..... | 4 |
| Conclusions..... | 5 |
| Appendix R..... | 105a |
| Appendix S..... | 106a |


TABLE OF AUTHORITIES


| | |
|---|---|
| Cases: | |
| Matsushita Electric Industrial Co. v. Zenith Radio Corporation. 54 U.S.L.W. 4319 (U.S. Mar. 26,1986)..... | 1 |
| United States v. Diebold,Inc. 369 U. S. 654,655 (1962)..... | 1 |
| Anderson v. Liberty Lobby 54 U.S.L.W. 4755 (U.S. June 25,1986)..... | 2 |
| Goodman v. Lukens Steel Co. 55 U.S.L.W. 4881.4883 (U. S. June 19,1987)..... | 2 |

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

## RESPONSE TO ARGUMENTS I & II RAISED IN RESPONDENT'S BRIEF IN OPPOSITION

Respondent's arguments cites Matsushita Electric Industrial Co. v. Zenith Radio Corporation 54 U.S.L.W. 4319 (U.S. Mar. 26,1986) (Resp. 5 ). It is most important to note in this Courts decision in Matsushita supra both the majority and minority opinions of this court in that matter reiterated and reinforced the argument put forth to this court by petitioner: "[o]n summary judgment the inferences to be drawn from the underlying facts...must be reviewed in the light most favorable to the party opposing the motion. United States v. Diebold, Inc. 369 U.S. 654,655 ( 1962 )" (Pet 22)

In respondents' reliance on Anderson v. Liberty Lobby, 54 U.S.L.W. 4755 (U. S. June 25,1986) (Resp.5); this court further established the principle of Rule 56 in summary judgment matters that : It by no means authorizes trial on affidavits. The evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor.

Additionally, respondents' cited Goodman v. Lukens Steel Co., 55 U.S L.W. 4881, 4883 (U.S. June 19, 1987) (Resp.5); this matter is a review of an extensive trial record in the district court not a summary judgment, as at hand, where requested depositions of defendants were not permitted and interrogatories submitted by petitioner to respondents were permitted not to be answered by the district court and no extensive trial.

## POINTS SERIOUSLY ERRONEOUS IN RESPONDENT'S BRIEF IN OPPOSITION

Respondents' reference to U.S. Dept. of Labor investigation (Resp.2), it is most important to correct respondent and to note the U.S. Dept. of Labor's letter dated January 6, 1983 (App R) stating ... all participants were 100% vested and although insurance contracts held by the Plan were distributed to each participant, the assets of the Plan's auxiliary fund have not yet been distributed to all participants, the trustees should dis - tribute same. Also failure to distribute benefits is in violation of ERISA section 404, (a) (1) (B) and (D).

Respondent's reference to petition- er's statement and certification(Resp.7)

Petitioner;s statement of "subsequently terminated" referred to termination date of September, 1981 (App S). Previously petitioner was restrained by a temporary court order requested by respondent for her alledged well being. However, the respondent at no time denies that the Corporate Resolution of termination dated April 9, 1978 submitted by respondents is not fraudulent as stated by petitioner (App L)

## NEW DEVELOPMENTS

Petitioner informs this Court that on December 3, 1987 a Motion To Vacate and/or Reconsider Summary Judgment was filed with the U.S. District Court - District of New Jersey. This motion is predicated on Rule 60(b), (3) and (6)

of the Federal Rules of Procedure; fraud on the court, misrepresentation and other misconduct of an adverse party.

Respondent represented to the district court they submitted the entire Pension Trust Plan; however there have been four (4) pages of Amendments to the Pension Trust Plan, including cover page, that were knowingly not included by the respondents in their submission to the district court. These Amendments were vital to petitioner's case.

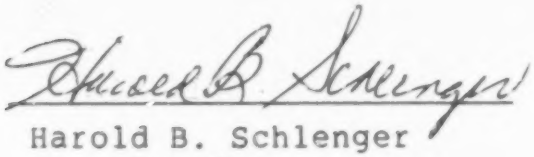
CONCLUSIONS

If this matter is permitted the company United Wool Piece Dyeing and Finishing Co. will have achieved a tax deduction benefit on its corporate tax return and the adversaries also have distributed to themselves pension plan funds all tax free; illegally under

previous and present tax laws. Thereby setting precedents for others to follow.

For the foregoing reason, as well as those which have been urged in the petition, certiorari should be granted.

Respectfully submitted,



Harold B. Schlenger
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## Appendix R

U.S. Department of Labor

Labor Management Services Administration

Letter dated January 6, 1983

"In addition, as I noted, our investigation disclosed that the Plan, by its own terms, terminated September 1, 1978 and that all participants were 100% vested as of September 1. 1976. The Plan further stated that upon termination , the trustees shall distribute the assets of the Plan to the participants. Although insurance contracts held by the Plan were distributed to each participant, the assets of the Plan's auxiliary fund have not yet been distributed to all participants. It is my view that the failure of the Plan's trustees to distribute benefits in accordance with Plan documents is in violation of ERISA sections 404(a)(1)(B)and (D)..."

## Appendix S

Certification of Harold B. Schlenger

Date: January 30,1986

....I understand that that termination of the Plan results in the automatic vesting of all benefits of all beneficiaries, including myself. All of this occured while I continued to be employed by United Wool Piece Dyeing & Finishing Co. My employment was subsequently terminated.